IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P.124 of 2004

Date of decision:**Oct.23, 2007**

Onkar Singh & others — Petitioners

Versus

State of H.P. & Anr. — Respondents

Coram:

The Hon'ble Mr. Justice **Deepak Gupta, J.**

The Hon'ble Mr. Justice ***V.K. Ahuja, J.***

Whether approved for reporting[1]*?*

For the petitioners: **Mr.Dibender Ghosh, Advocate.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. J.S.Guleria, Law Officer.**

Per V.K.Ahuja.J.(Oral):

This Writ Petition has been filed under Articles 226/227 of the Constitution of India for issuance of appropriate directions to the respondents.

The brief facts of the case are that the petitioners have been authorized by the Gram Panchayat, Nadoli to file the present writ petition as public interest litigation. It was alleged that the respondents are ignoring the public interest with a view to benefit a particular area for utilizing the funds sanctioned by the Union of India under the 'Pradhan Mantri Gram Sadak Yojna', which funds are to be utilized for the purpose of construction of road from Nadoli to Purkher. It was alleged that the Govt. of India had circulated guidelines for the purpose of implementation of 'Pradhan Mantri Gram Sadak Yojna' and a sum of Rs.37.40 lac was sanctioned for

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[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

the purpose of construction of a road named Nadoli to Purkher Road 0/0 to 2/0 KM. A survey was conducted but due to some vested interest, the survey was got changed and when the petitioners learnt about the same they made representations and another survey was conducted and the road was to be constructed accordingly. It was alleged that the respondents are trying to utilize the funds at different places than the one qua which the funds were sanctioned. The petitioners being aggrieved by the action of the respondents in changing the survey and are trying to utilize the funds for constructions of road at another place, they filed the present writ petition challenging the action of the respondents in changing the alignment for constructing the road.

The respondents in their reply admitted the allegations in regard to the sanction of the sum for construction of the road. However, they pleaded that as per the guidelines, the roads are proposed subject to the availability of land free of cost from the prospective owners and to serve the maximum cluster of village population but not less than 250. It was pleaded that the work has not been awarded to respondent No.4 as alleged and the work could not been started since the real owners of the land were not willing to donate their land for the purpose and they mentioned the names of several persons whose land falls in between, but have not given permission. They pleaded that they are not changing the survey and are starting the construction on the basis of the guidelines issued.

We have heard the learned counsel for the parties and have gone through the record of the case.

On the last date, during hearing of the case, a Supplementary affidavit was filed by the Superintending Engineer that the best alignment was from points D to B but two of the owners of the land namely S/Shri Dina Nath and Hari Singh did not donate their land for the construction of the road. The second best alignment as per the affidavit of Superintending Engineer was from points A to C but the land of Smt. Kavita Kumari and Raj Kumar was coming in their way and they were not agreeable to donate their land. The petitioner filed a counter affidavit that both the above persons S/Shri Dina Nath and Hari Singh are willing to donate their lands and the lands of Smt. Kavita Kumari and Shri Raj Kumar does not come within the alignment of the road from points A to C. The Superintending Engineer was directed to verify this fact on the spot and report if the alignment has to be changed slightly to avoid the land of the persons being coming in between. A supplementary affidavit was filed by the Superintending Engineer enclosing therewith the statements of all the four persons mentioned above who have stated that they are not agreeable to donate their lands for the construction of the above proposed road, which condition was must as per the guidelines issued under the Scheme. It is, therefore, clear that the petitioner had made a wrong allegation by filing an affidavit that these persons were ready to give their land for construction of the road and the alignment was being changed by the respondents out of their own accord. Once these persons, whose lands fall within the proposed road are not willing to donate their land as required under the Scheme, the respondents are not bound to construct the land in accordance with the original survey or in accordance with the original plan confirmed

by them for construction of the road due to the condition not being fulfilled by these persons and, therefore, the assertions made by the petitioners are ill-founded and have not been substantiated. The petitioner had taken time to file the affidavits of these persons that they are willing to donate their lands but they failed to file the same and rather the respondents have filed their certificates enclosing the statements of these persons that they are unwilling to donate their lands for the construction of the road. In these circumstances, the respondents cannot construct the road at the places where the lands of these four persons fall and in public interest the amount sanctioned about three years ago cannot be allowed to lapse which sanction has been made for the benefit of the people and road has to be constructed by the respondents in accordance with the directions and the guidelines issued under the 'Pradhan Mantri Gram Sadak Yojna'. Therefore, the respondents are entitled to change the alignment of the road in accordance with the instructions and in public interest and they are entitled to utilize the funds sanctioned for the construct ion of the road .

The construction of the road cannot be stopped only due to ill founded apprehensions in the minds of the petitioners which have not been substantiated and, therefore, there is no merit in the writ petition filed by the petitioners. The petition is accordingly dismissed. There is no order as to costs.

(V.K.Ahuja),J. (Deepak Gupta),J.
23rd October, 2007.